WEBSTER NYAMETO
versus
THE STATE

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 28 August and 2 September 2014

Bail Pending Trial

B. Chipadza, for the Applicant
B. Murevanhema, for the Respondent

MATANDA-MOYO J: Applicant appeared before the Magistrates Court, Harare facing a charge of theft as defined in s 113 of the Criminal Law Codification and Reform Act [*Cap 9:23*]. He applied for a bail pending trial and was denied. He now appeals against that decision.

The allegations against the applicant are that from 23 July 2014 to 5 August 2014 the applicant stole from the complainant US$31 586-00. The applicant was employed as a till operator by the complainant and his deceitful behaviour was discovered on 5 August 2014 after violating company's rule that he was operating a cellphone whilst at work. On 6 August 2014 it was discovered that the applicant's till terminal had been used to charge an electrical gadget whilst it was a grocery terminal only. The electrical gadget, a refrigerator valued at US$1 500-00 had been missing and he admitted to crediting the fridge on his till with an intention of latter on cancelling the credit note. He stole the cash amounting US$1 500-00. An audit carried out discovered that complainant was using the same *modus operandis* from 23 July 2014 and had stolen $31 586-00.

It is his argument through his representative that the fact that the applicant is facing a very serious offence is on its own not an adequate reason for denying him bail. This indeed is the correct legal position. The court have for time without number emphasised that every suspect is presumed innocent until proven guilty by a competent court. Therefore, that presumption can only be shaken by other factors in addition to the seriousness of the offence see *F Mambo* v *S* 1992 1 ZLR 245 (H) *Kanoda & Ors* v *S* HH 200/90.

In casu, the applicant is facing a theft charge. The question is, are there any other factors, which if taken in conjunction with the seriousness of the offence militates against the applicant quest for bail? In the case of *Jongwe* vs *S* 2002 (2) ZLR the honourable CHIDYAUSIKU CJ laid out the following guideline;

> "a) The character of the charges and the penalties which in all probability would be imposed if convicted.
>
> b) The strength of the state case.
>
> c) Applicant's ability to flee to a foreign country and the absence of extradiction facilities.
>
> d) The past response to being released on bail.
>
> e) The assurance given that he is intended to stand trial."

I am entitled to agree with the defence counsel that no money was recovered from the applicant per se but it is the relatives of the applicant who brought the money to the complainant's office in batches.

At this stage, it is not clear whether the applicant was the sole operator of the till in question, didn't the complainant have a rotational system where different employees operate the till. Hence the presumption of innocence is still in his favour. The fear of absconding can be allayed by stringent bail conditions such as surrendering travel documents, stringent reporting condition and payment of bail money as assurance that he will stand bail.

Accordingly, I admit the applicant to bail on the following conditions:-

1. He deposits $500-00 with the Clerk of Court Rotten Row, Harare.
2. The applicant reside at House Number 17 Mupani Avenue, Mufakose, Harare until finalisation of this matter.
3. The appellant is to report twice every Monday and Friday at Harare Central Police Station between 6am and 6pm.
4. The applicant is to surrender his passport to the Clerk of Court, Harare Magistrates Court.

Lawman Chimuriwo, Applicant's Legal Practitioners
A – G, Respondent's Legal Practitioners